IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Revision Application No.105 of 1998

Shivling Baburao Jhadbuke,
age 46, Occ; Busiiness and Pensioner,
R/o. Modnimb, Tal. Madha,
Dist. Solapur. Petitioner

Vs.

1. Saudagar Sidu Dongre,
age - 47, Occ:Agriculture,
R/o. Modnimb, Tal. Madha,
Dist. Solapur.

2. State of Maharashtra

Mr.Vijay Killedar h/f. Mr.Nitin Jamdar for petitioner.

Mr.Y.S.Shinde, APP for State.

CORAM: B.H.MARLAPALLE,J.

January 09, 2007.

ORAL JUDGMENT :

1. The applicant had filed Regular Criminal Case No.125 of 1993 before the learned Judicial Magistrate First Class at Madha against the respondent for offences punishable under Sections 420, 465 and 468 of IPC. The said complaint was allowed by the judgment and order dated 22/4/1996 and the respondent-accused was held guilty for the offences punishable under Sections 420, 465 and 468 of IPC.

For all the offences he was sentenced to suffer S.I. till the rising of the Court and to pay a fine of Rs.300/- for each offence. This order of conviction and sentence was challenged in Criminal Appeal No.36 of 1996 by the accused - respondent and the learned Addl. Sessions Judge at Solapur vide his judgment and order dated 26/11/1997 was pleased to allow the appeal and the respondent was acquitted of all the offences. Hence this criminal revision application against the judgment and order of the learned Addl. Sessions Judge allowing Criminal Appeal no.36 of 1996.

2. Both the parties had examined witnesses in support of their respective cases. The present applicant-complainant in addition to examining himself had examined Machindra Wagh (PW 2) and Ganesh Venkat Shete (PW 3) whereas the accused examined four witnesses viz. Balasaheb Chavan, Advocate (DW 1), Ashok Saswadkar (DW 2), Ashok Jagannath Ghongade (DW 3) and Madhukar Dattu Kharat (DW 4). The statement of the accused was recorded under Section 313 of Cr.P.C. The case of the complainant was that the accused had executed a registered sale deed in favour of the complainant on 15/5/1992 in respect of the

house property bearing City Survey No.1096 which was an open plot owned and possessed by the accused and he had suppressed the fact that the very same property was sold to one Mrs. Pramila Khadake on 19/8/1983 by a sale deed for a consideration of Rs.2000/-. It was further submitted that though the suit property was sold to Mrs. Pramila Khadake way back in August 1983 on the record of rights the name of the accused was standing and not the name of Mrs. Khadake in respect of the said property. As per the complainant the accused by taking undue advantage of recording of his his name in the record of rights, entered into the transaction of sale with the complainant knowing fully well that he had already sold the property to Mrs. Pramila Khadake and thus he had committed offences punishable under Sections 420, 465 and 468 of IPC.

3. Per contra the accused had contended that he had borrowed an amount of Rs.3000/- from the complainant with interest and it was a transaction of money lending. He had informed the complainant regarding the pendency of dispute between him and Mrs. Pramila Khadake on account of the sale transaction entered with her. It was further the

case of the accused that in view of the amount he borrowed, the document of sale was got executed by the complainant and the amount of consideration shown as Rs.25,000/- was never paid to him by the complainant.

4. On assessment of the evidence of the respective parties the learned Judicial Magistrate, First Class held that the accused had cheated the complainant on 15/5/1992 by dishonestly inducing him to deliver the consideration of Rs.25,000/- against the suit property which was already sold by him to Mrs. Pramila Khadake and he thereby committed an offence punishable under Section 420 of IPC. Consequently, the offences punishable under Sections 465 and 468 of IPC were also proved as per the trial Court. The learned Addl. Sessions Judge did not agree with the conclusions arrived at by the trial Court and as an appellate Court, on reassessment of the evidence adduced by both the parties, held that (a) the complainant was aware of the transaction dated 19/8/1983 between the accused and Mrs. Pramila Khadake, (b) the sale transaction dated 15/5/1992 between the complainant and the accused was not an out and out sale transaction but it was in fact a

transaction of money lending and (c) the complainant had undertaken to deal with the pending dispute between the accused and Mrs.Pramila Khadake and under these circumstances, it could not be held that the accused was guilty of cheating the complainant and thus liable for punishment under Section 420 of IPC. Consequently there could not be any offence punishable under Sections 465 and 468 of IPC against the accused.

5. In his depositions before the trial Court, the complainant had stated that he paid an amount of Rs.16,193/- to the accused and cheque of Rs.8,807/- was drawn upon Pandharpur Urban Bank, Branch at Modnimb. This amount of Rs.8,807/- was towards the loan of Laxman Kulkarni for which the accused was a guarantor. He further claimed that within three months after signing the sale deed on 15/5/1992 he came to know that the suit property was sold to one Mrs. Pramila Shashikant Khadake on 19/8/1983 and, therefore, he issued notice to the accused (Exh.22). In his cross-examination he admitted that he was doing the money lending business in the vicinity of Modnimb and Madha. He denied that he published a public notice in Daily Sanchar on 15/3/1991 through

Advocate Shri S.H. Waghmare. He also claimed that he had not obtained search report before the sale deed was signed on 15/5/1992. He also denied that the house property was mortgaged by the accused to Pandharpur Urban Co-operative Bank, Branch at Modnimb but he admitted that the accused was guarantor to the loan obtained by Laxman Kulkarni from the said Bank. The other two witnesses i.e. PW 2 and PW 3 also deposed regarding the so called sale transaction dated 15/5/1992 between the complainant and the accused.

6. The accused examined Shri Balasaheb Chavan, an advocate (DW 1) to prove that on 15/3/1991 the complainant had published a notice in Daily Sanchar newspaper through Shri S.H. Waghmare, Advocate and the same was replied by him on behalf of Mrs. Pramila Khadake. Ashok Jagannath Ghongade (DW 3) was at the relevant time working for Daily Sanchar at Solapur and he stated that the notice dated 15/3/1991 was published at the instance of Advocate Waghmare and on behalf of the complainant at page no.8 and column no.4. The notice was addressed to Saudagar Siddhu Dongre and others. The draft of the notice was given in the office of Sanchar newspaper by

Advocate Waghmare on 13/3/1991. The newspaper copy dated 15/3/1991 was placed on record at Exhibit 61. This factum of publication of notice in the newspaper remained unchallenged and the further fact that it was published at the behest of the complainant is also proved. Testimony of DW 1 Advocate Chavan also further proved that the public notice was replied by him on behalf of Mrs. Pramila Khadake and pointing out the earlier sale transaction between her and the accused. Even in the statement recorded under Section 313 of Cr.P.C. the accused had admitted that he had received an amount of Rs.3000/- and some document was signed by him in favour of the complainant and that he had also informed the complainant about the pending dispute between himself and Mrs. Khadake in respect of the suit house. The evidence of Ashok Saswadkar, an employee of the Pandharpur Urban Co-operative Bank, Mondnimb Branch also falsified the story of the complainant that he had paid an amount of Rs.25,000/- as the sale consideration to the accused. The complainant had claimed that an amount of Rs.16,193/- was paid in cash and balance amount of Rs.8,807/- was paid by cheque. The evidence of DW 2 went to show that the cheque of Rs.8,807/- was deposited by the complainant

in the loan account of Laxman Kulkarni and this clearly indicated that the complainant was trying to build the record to show that the accused had sold the suit house to him. Exhibits 55 to 58 were the copies of slips placed by DW 2 before the trial Court. The Bank employee also stated that he had taken objection to the transaction between the complainant and the accused in respect of the suit house as it was hypothecated to the Bank.

7. On the face of the evidence that was adduced by the accused the learned Judge of the lower Appellate Court was right in holding that the complainant was aware of the sale transaction between the accused and Mrs. Pramila Khadake prior to the transaction dated 15/5/1992, the public notice released by him or on his behalf on 15/3/1991 was replied by Mrs. Khadake through her Advocate DW 1 and, therefore, the accused could not be held guilty of an offence punishable under Section 420 of IPC. The lower Appellate Court rightly set aside the findings recorded by the trial Court on this issue. Once the accused is acquitted of offence punishable under Section 420 of IPC, his acquittal for the offences under Sections 465 and 468 of IPC would

follow and, therefore, the impugned order of acquittal does not call for any interference as the same cannot be held to be perverse or contrary to the evidence adduced before the trial Court.

8. In the premises this Revision Application fails and the same is hereby dismissed. Rule discharged.

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